

REMARKS/ARGUMENTS

In the Office Action mailed November 16, 2010, claims 1 – 4, 6 – 12, 14, and 15 were rejected. Additionally, claims 5 and 13 were objected to, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, Applicants have amended claims 7 and 13. Applicants hereby request reconsideration of the application in view of the amendments and the below-provided remarks.

For reference, the title is amended to be indicative of the invention, the specification is amended to correct a typographical error, and claims 7 and 13 are amended to correct grammatical errors.

Allowable Subject Matter

Applicants appreciate the Examiner's review of the claims and determination that claims 5 and 13 recite allowable subject matter. In particular, the Office Action states that claims 5 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The claims have not been rewritten at this time in view of the below provided remarks.

Objections to the Drawings

The current application is a U.S. National Stage application. The labeling of figures with text matter is prohibited under PCT Rule 11.11, except when absolutely indispensable for understanding. Further, MPEP 1893.03(f) states that “[t]he USPTO may not impose requirements beyond those imposed by the Patent Cooperation Treaty (e.g., PCT Rule 11).” In the present application, Applicants submit that the addition of text labels to the drawings is not “absolutely indispensable” because the individual drawing elements are identified and described in the specification. In view of the above rules, Applicants respectfully assert that additional text labeling is not required in the drawings of the current application.

Objections to the Specification

The Office Action also suggests that section headings be added to the specification, according to the guidelines set forth in the MPEP. Applicants note that the suggested section headings are not required and, in fact when Rule 77 was amended in 1996 (61 FR 42790, Aug. 19, 1996), Bruce A. Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, stated in the Official Gazette:

“Section 1.77 is permissive rather than mandatory. ... 1.77 merely expresses the Office's preference for the arrangement of the application elements. The Office may advise an applicant that the application does not comply with the format set forth in 1.77, and suggest this format for the applicant's consideration; however, the Office will not require any application to comply with the format set forth in 1.77.”

Hence, Applicants respectfully decline to amend the specification to include the indicated section headings.

The specification is also objected to as failing to provide proper antecedent basis for the subject matter of claims 3 and 11. In particular the Office Action states that “there is not disclosure of the battery level being monitored.” (Office action, page 3) Applicants assert that the subject matter of claims 3 and 11 is disclosed for example, at paragraph [0009] (U.S. Pub. No. 2008/0259210 A1).

Claim Rejections under 35 U.S.C. 102 and 103

Claims 1 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tults (U.S. Pat. No. 5,900,913) in view of Kirkland (U.S. Pat. No. 5,900,918) or Harris et al. (U.S. Pub. Pat. No. 2002/0021760 hereinafter Harris). Claims 3, 8 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tults and Kirkland or Harris, in view of Asai et al. (U.S. Pub. Pat. No. 2002/0000984 hereinafter Asai). Claims 4, 6, 7, 12, 14 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tults and Kirkland or Harris, in view of Rich (U.S. Pat. No. 5,758,271). However, Applicants respectfully submit that these claims are patentable over Tults, Kirkland, Harris, Asai and Rich for the reasons provided below.

Claim 1

Claim 1 recites:

“An audio visual display apparatus arranged to receive a broadcast signal comprising a video element and an audio element, wherein the audio element includes an audio description element providing a description of at least some of the video content, the apparatus including means for switching to output the said audio description element in place of the video element in response to a deterioration in an operating characteristic associated with the apparatus.” (emphasis added)

That is, the output is switched from video to an audio description of the video in response to a deterioration in an operating characteristic (e.g., battery level, memory capacity, signal quality). The terms “deterioration” and “deteriorate” are defined by Dictionary.com as follows:

deterioration

–noun

1. the act or process of deteriorating.
2. the state or condition of having deteriorated.
3. a gradual decline, as in quality, serviceability, or vigor.

deteriorate

–verb (used with object), verb (used without object), -rat·ed, -rat·ing.

1. to make or become worse or inferior in character, quality, value, etc.
2. to disintegrate or wear away.

Applicants assert that “deterioration” is a relative term, which indicates that the character, quality, or value of something (e.g., an operating characteristic of an apparatus such as battery level, memory capacity, signal quality) has become worse. This implies that the something still exists, or else it could not be worse.

Tults teaches that deflection signals, which are generated by a television receiver, are used to decode a Closed Caption (CC) data signal. When the television receiver is turned off so that the television receiver is in standby mode, the deflection signals are no longer generated. Tults goes on to teach a technique for decoding auxiliary data signals that does not use the deflection signals so that content such as program guide information can be decoded even though the television receiver is turned off (i.e., in standby mode), see Tults col. 2, lines 5 – 26.

In support of the rejection, the Office Action alleges that the lack of availability of the deflection signals when the receiver is turned off reads on “a deterioration in an operating characteristic associated with the apparatus.” In particular, the Office action states:

“When an operating characteristic of the video component deteriorates (e.g. deflection is not available: col. 2 lines 5-9), an auxiliary component is played regardless (i.e. closed-

captioning) and the video component power supply is switched off (col. 4 line 29+).”
(emphasis added) (Office action, page 4)

Applicants assert that the loss of the deflection signals in response to the television receiver being turned off does not teach “a deterioration in an operating characteristic associated with the apparatus,” as recited in claim 1. That is, the loss of the deflection signal because the television receiver is turned off is not a deterioration of the deflection signals. The deflection signals do not become worse in character, quality, or value, rather, the deflection signals cease to exist. Because the loss of the deflection signals in response to the television receiver being turned off does not teach “a deterioration in an operating characteristic associated with the apparatus,” Applicants assert that a *prima facie* case of obviousness has not been established with respect to claim 1.

Even if the loss of the deflection signals were to be read as a deterioration in the deflection signals, the loss of the deflection signals does not trigger a switch from outputting video to outputting an audio description of the video. Rather, Tults teaches that a switch from the normal operating mode (i.e., the receiver is “on”) to the standby mode (i.e., the receiver is “off”), triggers the auxiliary data to be decoded using a separated sync signal instead of deflection signals, see Tults Abstract. The switch to decoding the auxiliary data using a separated synch signal instead of the deflection signals does not trigger a switch from outputting video to outputting an audio description of the video.

Independent Claim 9

Applicants respectfully assert that independent claim 9 is patentable over the proposed combinations of cited references at least for similar reasons to those stated above in regard to the rejection of independent claim 1.

Dependent Claims

Claims 2 – 8 are dependent on claim 1 and claims 10 – 15 are dependent on claim 9. Applicants respectfully assert that these claims are allowable at least based on an allowable base claim.

CONCLUSION

Generally, in this Amendment and Response, Applicants have not raised all possible grounds for (a) traversing the rejections of the Action or (b) patentably distinguishing any new claims (i.e., over the Cited References or otherwise). Applicants however, reserve the right to explicate and expand on any ground already raised and/or to raise other grounds for traversing and/or for distinguishing, including, without limitation, by explaining and/or distinguishing the subject matter of the Application and/or any cited reference at a later time (e.g., in the event that this Application does not proceed to issue with the claims as herein amended, or in the context of a continuing application). Applicants submit that nothing herein is, or should be deemed to be, a disclaimer of any rights, acquiescence in any rejection, or a waiver of any arguments that might have been raised but were not raised herein, or otherwise in the prosecution of this Application, whether as to the original claims or as to any of the new claims, or otherwise. Without limiting the generality of the foregoing, Applicants reserve the right to reintroduce one or more of the original claims in original form or otherwise so as to claim the subject matter of those claims, both/either at a later time in prosecuting this Application or in the context of a continuing application.

Applicants respectfully request reconsideration of the claims in view of the amendments and the remarks made herein. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

/mark a. wilson/

Date: February 2, 2011

Mark A. Wilson
Reg. No. 43,994

Wilson & Ham
1811 Santa Rita Road, Suite 130
Pleasanton, CA 94566
Phone: (925) 249-1300
Fax: (925) 249-0111